

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 748

Introduced by Bourne, 8; Janssen, 15; Kremer, 34; Synowiecki, 7

Read first time January 19, 2005

Committee: Urban Affairs

A BILL

1 FOR AN ACT relating to natural gas; to amend sections 16-6,101,
2 57-1302, 66-1803, 66-1848, and 76-703, Reissue Revised
3 Statutes of Nebraska, and sections 13-2802, 14-2116,
4 16-645, 16-674, 17-559, 18-2520, 18-2523, 18-2528, and
5 19-709, Revised Statutes Supplement, 2004; to change
6 provisions relating to natural gas; to eliminate the
7 Municipal Natural Gas System Condemnation Act; to state
8 intent; to define and redefine terms; to provide powers
9 and duties; harmonize provisions; to repeal the original
10 sections; to outright repeal sections 19-4624 to 19-4645,
11 Revised Statutes Supplement, 2004; and to declare an
12 emergency.
13 Be it enacted by the people of the State of Nebraska,

1 Section 1. (1) In order to provide the citizens of the
2 state with adequate natural gas service at as low an overall cost
3 as possible, consistent with sound business practices, and in
4 exchange for natural gas franchises, it is the policy of the state
5 that a city has a right of first refusal with respect to any
6 natural gas system that serves the city. It is also the policy of
7 the state to encourage publicly owned or operated natural gas
8 utilities in order to provide natural gas to consumers at
9 reasonable rates at as low an overall cost as possible.

10 (2) For purposes of this section:

11 (a) City means any city or village;

12 (b) Jurisdictional utility has the same meaning as in
13 section 66-1802;

14 (c) Offer to acquire, purchase, or lease does not include
15 any foreclosure, tax sale, condemnation proceeding, or exchange of
16 customers; and

17 (d) Right of first refusal means the absolute right to
18 have the first opportunity to acquire, purchase, or lease real
19 property upon the same terms and conditions as set forth in a
20 proposed offer to acquire, purchase, or lease from another party.

21 (3) If a jurisdictional utility that provides natural gas
22 service within a city or a city's extraterritorial zoning
23 jurisdiction decides to dispose of, sell, or lease its natural gas
24 system, or any part thereof, and receives a written offer to
25 acquire, purchase, or lease the system, or part thereof, the city
26 shall have the right of first refusal. The jurisdictional utility
27 shall mail to the city by certified mail written notice of its
28 intent to accept the offer and a copy of the offer. The city shall

1 have sixty days after the delivery of such notice and copy of the
2 offer to match the offer, except that if the city needs additional
3 information from the jurisdictional utility, the city shall have
4 sixty days after receipt of such additional information to match
5 the offer. If the city offers to acquire, purchase, or lease the
6 system, or portion thereof, on the same terms and conditions set
7 forth in the proposed offer from the other party, the
8 jurisdictional utility shall accept the city's offer and reject the
9 other party's offer.

10 (4) The city may assign the right of first refusal.

11 Sec. 2. Notwithstanding any other provision of law, in
12 order to meet anticipated load, a city or village may expand or
13 contract with any public or private natural gas utility to expand
14 the natural gas system that serves the city or village if the
15 investor-owned natural gas utility that supplies natural gas to the
16 city or village does not, within one month after written notice
17 from the city or village, commit to provide such infrastructure at
18 a cost that is rate-based systemwide or does not, within six months
19 after the written notice from the city or village, complete the
20 construction of such infrastructure.

21 Sec. 3. (1) For purposes of this section:

22 (a) City means a city of the primary, first, or second
23 class or village; and

24 (b) Natural gas system means all or any portion of a
25 natural gas plant or a natural gas system, including a natural or
26 bottled gas plant, gas distribution system, or gas pipelines,
27 together with real and personal property needed or useful in
28 connection therewith, but does not mean any part of a system owned

1 or operated by a political subdivision.

2 (2) (a) A city may acquire and appropriate a natural gas
3 system located or operating within or partly within and partly
4 without a city or village through the exercise of the power of
5 eminent domain, even though a franchise for the construction and
6 operation of any such natural gas system may or may not have
7 expired. The procedure to condemn property shall be exercised in
8 the manner set forth in sections 76-704 to 76-724, except as to
9 property specifically excluded by section 76-703, and the county
10 judge or clerk magistrate may compel the owner of the natural gas
11 system to produce any books, papers, documents, records, accounts,
12 or other evidence that may be necessary to assist the appraisers in
13 determining the award.

14 (b) If an appeal is taken from the award of the
15 appraisers, the governing body of the city, upon depositing the
16 amount of the award with the court as provided in section 76-711,
17 may, in addition to taking possession of the natural gas system as
18 provided in sections 76-711 and 76-714, issue and sell general
19 obligation bonds of the city to pay the amount of the value of the
20 natural gas system set out in the award and any other obligations
21 of the city arising from the condemnation, including acquisition
22 costs, fees, court costs, and related expenses. Such bonds may be
23 issued and sold without a vote of the registered voters of the
24 city.

25 (c) Whenever a city has acquired a natural gas system
26 pursuant to this section, the condemnee, if it is also the owner of
27 any transmission system, whether by pipeline or otherwise, from any
28 other point to such city shall, at the option of such city, be

1 required to render wholesale service to such city whether otherwise
2 acting as wholesaler or not, at a level adequate to meet the
3 previous peak demand of the system acquired.

4 (3) Supplemental to any existing law on the subject and
5 in lieu of the issuance of general obligation bonds, or the levying
6 of taxes upon property, as by law provided, any city may construct,
7 purchase, or otherwise acquire a natural gas system, either within
8 or without the corporate limits of the city, and pay the cost
9 thereof by pledging and hypothecating the revenue and earnings of
10 any gas system owned or to be owned by the city. In the exercise
11 of the authority granted by this section, any city may issue and
12 sell revenue bonds or debentures and enter into such contracts in
13 connection therewith as may be proper and necessary. The revenue
14 bonds or debentures shall be a lien only upon the revenue and
15 earnings of the gas system owned or to be owned by the city. Such
16 bonds may be issued and sold without a vote of the registered
17 voters of the city.

18 Sec. 4. (1) For purposes of this section:

19 (a) City means a city of the primary, first, or second
20 class or village;

21 (b) Jurisdictional utility has the same meaning as in
22 section 66-1802; and

23 (c) Natural gas system means all or any portion of a
24 natural gas plant or a natural gas system, including a natural or
25 bottled gas plant, gas distribution system, or gas pipelines,
26 together with real and personal property needed or useful in
27 connection therewith.

28 (2) This section applies when a city that owns or

1 operates a natural gas system annexes territory in which customers
2 are served by a jurisdictional utility notwithstanding any other
3 provision of law. Thirty days after the effective date of the
4 annexation or the effective date of this act, whichever is later,
5 the customers shall be deemed customers of the city or village and
6 the city or village shall have all the powers within such territory
7 as it did within the prior corporate limits, including the power to
8 install or extend municipal natural gas utility infrastructure
9 within the territory. The price to be paid by the city or village
10 to the jurisdictional utility for that utility's infrastructure
11 shall be determined as provided in sections 76-701 to 76-724.

12 Sec. 5. Any natural gas utility owned or operated by a
13 city of the primary, first, or second class or village and any
14 metropolitan utilities district may take title to natural gas and
15 sell it for consumption by any end user in the state without
16 obtaining certification from the Public Service Commission.

17 Sec. 6. Section 13-2802, Revised Statutes Supplement,
18 2004, is amended to read:

19 13-2802. Whenever creation of a municipal county is
20 proposed involving a city of the metropolitan class, the
21 interjurisdictional planning commission shall include in its plan a
22 ~~recommendation with regard to the territory within which any~~
23 ~~metropolitan utilities district shall have and may exercise the~~
24 ~~power of eminent domain pursuant to subsection (2) of section~~
25 ~~14-2116.~~ The plan shall further include a recommendation with
26 regard to the territory which shall be deemed to be within the
27 corporate boundary limits or extraterritorial zoning jurisdiction
28 of a municipality or a municipality dissolved by the creation of

1 the municipal county for purposes of sections 57-1301 to 57-1307.
2 The question of creation of the municipal county shall not be
3 submitted to a vote under section 13-2810 until a law adopting the
4 provisions required by this section has been enacted.

5 Sec. 7. Section 14-2116, Revised Statutes Supplement,
6 2004, is amended to read:

7 14-2116. (1) In addition to any other rights and powers
8 conferred upon metropolitan utilities districts under sections
9 14-2101 to 14-2157, such districts shall have and may exercise the
10 power of eminent domain for the purpose of erecting, constructing,
11 locating, maintaining, or supplying such waterworks, gas works, or
12 mains or the extension of any system of waterworks, water supply,
13 gas works, or gas supply, and any such district may go beyond its
14 territorial limits and may take, hold, or acquire rights, property,
15 and real estate, or either or any of the same, by purchase or
16 otherwise. Such a district may for such purposes take, hold, and
17 condemn any and all necessary property.

18 (2) Any metropolitan utilities district shall have the
19 power to condemn or to exercise the power of eminent domain to
20 acquire parts of an existing utility's facilities only when such
21 facilities are within, annexed to, or otherwise consolidated within
22 the ~~corporate boundary~~ limits of a city of the metropolitan class
23 such district. The procedure to condemn property shall be
24 exercised in the manner set forth in sections 76-704 to 76-724.
25 ~~Within a municipal county, the power to condemn or to exercise the~~
26 ~~power of eminent domain for purposes of this subsection may be~~
27 ~~exercised by a metropolitan utilities district to the extent and in~~
28 ~~the manner provided by the Legislature as required by section~~

1 ~~13-2802.~~

2 Sec. 8. Section 16-645, Revised Statutes Supplement,
3 2004, is amended to read:

4 16-645. In all cases of damages arising from the
5 creation or widening of new streets, avenues, or alleys, from the
6 appropriation of property for sewers, parks, parkways, public
7 squares, public heating plants, power plants, gas works, electric
8 light plants, waterworks, or market places, and from change of
9 grade in streets, avenues, or alleys, the damages sustained shall
10 be ascertained and determined as provided in sections 76-704 to
11 76-724, except as to property specifically excluded by section
12 76-703 and as to which sections 19-701 to 19-707 ~~or the Municipal~~
13 ~~Natural Gas System Condemnation Act is~~ are applicable.

14 Sec. 9. Section 16-674, Revised Statutes Supplement,
15 2004, is amended to read:

16 16-674. The mayor and city council shall have power to
17 purchase or provide for, establish, construct, extend, enlarge,
18 maintain, operate, and regulate for the city any such waterworks,
19 gas works, power plant, including an electrical distribution
20 facility, electric or other light works, or heating plant, or to
21 condemn and appropriate, for the use of the city, waterworks, gas
22 works, power plant, including an electrical distribution facility,
23 electric or other light works, or heating plant. The procedure to
24 condemn property shall be exercised in the manner set forth in
25 sections 76-704 to 76-724, except as to property specifically
26 excluded by section 76-703 and as to which sections 19-701 to
27 19-707 ~~or the Municipal Natural Gas System Condemnation Act is~~ are
28 applicable. For purposes of this section, an electrical

1 distribution facility shall be located within the retail service
2 area of such city as approved by and on file with the Nebraska
3 Power Review Board, pursuant to Chapter 70, article 10.

4 Sec. 10. Section 16-6,101, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 16-6,101. Supplemental to any existing law on the
7 subject and in lieu of the issuance of general obligation bonds, or
8 the levying of taxes upon property, as by law provided, any city of
9 the first class may construct, purchase, or otherwise acquire a
10 waterworks plant or a water system, ~~or a gas plant or a gas system,~~
11 ~~including a natural or bottled gas plant, gas distribution system~~
12 ~~or gas pipelines,~~ either within or without the corporate limits of
13 ~~said~~ such city, and real and personal property needed or useful in
14 connection therewith, and pay the cost thereof by pledging and
15 hypothecating the revenue and earnings of any waterworks plant or
16 water system, ~~or a gas plant or a gas system, including a natural~~
17 ~~or bottled gas plant, gas distribution system or gas pipelines,~~
18 owned or to be owned by such city. In the exercise of the
19 authority herein granted, any city may issue and sell revenue bonds
20 or debentures and enter into such contracts in connection therewith
21 as may be proper and necessary. Such revenue bonds or debentures
22 shall be a lien only upon the revenue and earnings of the
23 waterworks plant or water system, ~~or a gas plant or a gas system,~~
24 ~~including a natural or bottled gas plant, gas distribution system~~
25 ~~or gas pipelines,~~ owned or to be owned by such city. No such city
26 shall pledge or hypothecate the revenue and earnings of any
27 waterworks plant or water system, ~~or a gas plant or a gas system,~~
28 ~~including a natural or bottled gas plant, gas distribution system~~

1 ~~or gas pipelines,~~ nor issue revenue bonds or debentures, as herein
2 authorized, until the proposition relating thereto has been
3 submitted in the usual manner to the qualified voters of such city
4 at a general or special election and approved by a majority of the
5 electors voting on the proposition submitted. Such ~~+ PROVIDED,~~
6 ~~such~~ proposition shall be submitted whenever requested, within
7 thirty days after a sufficient petition signed by the qualified
8 voters of such city equal in number to twenty percent of the vote
9 cast at the last general municipal election held therein ~~+ shall be~~
10 is filed with the city clerk. Three weeks' notice of the
11 submission of the proposition shall be given by publication in some
12 legal newspaper published in and of general circulation in such
13 city, or, if no legal newspaper is published therein, then by
14 posting in five or more public places therein. The requirement
15 herein for a vote of the electors, however, shall not apply when
16 such city seeks to pledge or hypothecate such revenue or earnings
17 or issues revenue bonds or debentures solely for the maintenance,
18 extension, or enlargement of any waterworks plant or water system,
19 ~~or a gas plant or a gas system,~~ including a natural or bottled gas
20 ~~plant, gas distribution system or gas pipelines,~~ owned by such
21 city.

22 Sec. 11. Section 17-559, Revised Statutes Supplement,
23 2004, is amended to read:

24 17-559. Second-class cities and villages shall have
25 power to create, open, widen, or extend any street, avenue, alley,
26 offstreet parking area, or other public way, or annul, vacate, or
27 discontinue the same; to take private property for public use for
28 the purpose of erecting or establishing market houses, market

1 places, parks, swimming pools, airports, gas systems, including
2 distribution facilities, water systems, power plants, including
3 electrical distribution facilities, sewer systems, or for any other
4 needed public purpose; and to exercise the power of eminent domain
5 within or without the city or village limits for the purpose of
6 establishing and operating power plants including electrical
7 distribution facilities to supply such city or village with public
8 utility service, and for sewerage purposes, water supply systems,
9 or airports. The procedure to condemn property shall be exercised
10 in the manner set forth in sections 76-704 to 76-724, except as to
11 property specifically excluded by section 76-703 and as to which
12 sections 19-701 to 19-707 ~~or the Municipal Natural Gas System~~
13 ~~Condemnation Act is~~ are applicable. For purposes of this section,
14 electrical distribution facilities shall be located within the
15 retail service area of such city or village as approved by and on
16 file with the Nebraska Power Review Board, pursuant to Chapter 70,
17 article 10.

18 Sec. 12. Section 18-2520, Revised Statutes Supplement,
19 2004, is amended to read:

20 18-2520. ~~(1) Except as provided in subsection (2) of~~
21 ~~this section, the~~ The executive officer and governing body of a
22 municipal subdivision may at any time, by resolution, provide for
23 the submission to a direct vote of the electors of any measure
24 pending before it, passed by it, including an override of any veto,
25 if necessary, or enacted by the electors under sections 18-2501 to
26 18-2538 and may provide in such resolution that such measure shall
27 be submitted at a special election or the next regularly scheduled
28 primary or general election. Immediately upon the passage of any

1 such resolution for submission, the city clerk shall cause such
2 measure to be submitted to a direct vote of the electors, at the
3 time specified in such resolution and in the manner provided in
4 sections 18-2501 to 18-2538 for submission of measures upon
5 proposals and petitions filed by voters. Such matter shall become
6 law if approved by a majority of the votes cast.

7 ~~(2) The executive officer and governing body of a~~
8 ~~municipal subdivision shall not submit to a direct vote of the~~
9 ~~electors the question of whether the municipal subdivision should~~
10 ~~initiate proceedings for the condemnation of a natural gas system.~~

11 Sec. 13. Section 18-2523, Revised Statutes Supplement,
12 2004, is amended to read:

13 18-2523. (1) The power of initiative allows citizens the
14 right to enact measures affecting the governance of each municipal
15 subdivision in the state. An initiative proposal shall not have as
16 its primary or sole purpose the repeal or modification of existing
17 law except if such repeal or modification is ancillary to and
18 necessary for the adoption and effective operation of the
19 initiative measure.

20 (2) An initiative shall not be effective if the direct or
21 indirect effect of the passage of such initiative measure shall be
22 to repeal or alter an existing law, or portion thereof, which is
23 not subject to referendum or subject only to limited referendum
24 pursuant to section 18-2528.

25 ~~(3) The power of initiative shall extend to a measure to~~
26 ~~provide for the condemnation of an investor-owned natural gas~~
27 ~~system by a municipal subdivision when the condemnation would, if~~
28 ~~initiated by the governing body of the municipal subdivision, be~~

1 governed by the provisions of the Municipal Natural Gas System
2 Condemnation Act.

3 ~~(4) An initiative measure to provide for the condemnation~~
4 ~~of an investor-owned natural gas system by a municipal subdivision~~
5 ~~shall be a measure to require the municipal subdivision to initiate~~
6 ~~and pursue condemnation proceedings subject to the provisions of~~
7 ~~the Municipal Natural Gas System Condemnation Act.~~

8 Sec. 14. Section 18-2528, Revised Statutes Supplement,
9 2004, is amended to read:

10 18-2528. (1) The following measures shall not be subject
11 to referendum or limited referendum:

12 (a) Measures necessary to carry out contractual
13 obligations, including, but not limited to, those relating to the
14 issuance of or provided for in bonds, notes, warrants, or other
15 evidences of indebtedness, for projects previously approved by a
16 measure which was, or is, subject to referendum or limited
17 referendum or previously approved by a measure adopted prior to
18 July 17, 1982;

19 (b) Measures relating to any industrial development
20 projects, subsequent to measures giving initial approval to such
21 projects;

22 (c) Measures adopting proposed budget statements
23 following compliance with procedures set forth in the Nebraska
24 Budget Act;

25 (d) Measures relating to the immediate preservation of
26 the public peace, health, or safety which have been designated as
27 urgent measures by unanimous vote of those present and voting of
28 the municipal subdivision's governing body and approved by its

1 executive officer;

2 (e) Measures relating to projects for which notice has
3 been given as provided for in subsection (4) of this section and
4 for which a sufficient referendum petition was not filed within the
5 time limit stated in such notice or which received voter approval
6 after the filing of such petition;

7 (f) Resolutions directing the city clerk to cause
8 measures to be submitted to a vote of the people at a special
9 election as provided in sections 18-2524 and 18-2529;

10 (g) Resolutions ordering an earlier effective date for
11 measures enacted by initiative as provided in section 18-2526;

12 (h) Measures relating to any facility or system adopted
13 or enacted pursuant to the Integrated Solid Waste Management Act by
14 municipalities and which are necessary to carry out contractual
15 obligations provided for in previously issued bonds, notes,
16 warrants, or other evidence of indebtedness;

17 (i) Measures that amend, supplement, change, modify, or
18 repeal a zoning regulation, restriction, or boundary and are
19 subject to protest as provided in section 14-405 or 19-905; and

20 (j) Measures relating to personnel issues, including, but
21 not limited to, establishment, modification, or elimination of any
22 personnel position, policy, salary, or benefit and any hiring,
23 promotion, demotion, or termination of personnel. + and

24 ~~(k) Measures relating to matters subject to the~~
25 ~~provisions of the Municipal Natural Gas System Condemnation Act.~~

26 (2) The following measures shall be subject to limited
27 referendum:

28 (a) Measures in furtherance of a policy of the municipal

1 subdivision or relating to projects previously approved by a
2 measure which was subject to referendum or which was enacted by
3 initiative or has been approved by the voters at an election,
4 except that such measures shall not be subject to referendum or
5 limited referendum for a period of one year after any such policy
6 or project was approved at a referendum election, enacted by
7 initiative, or approved by the voters at an election;

8 (b) Measures relating to the acquisition, construction,
9 installation, improvement, or enlargement, including the financing
10 or refinancing of the costs, of public ways, public property,
11 utility systems, and other capital projects and measures giving
12 initial approval for industrial development projects;

13 (c) Measures setting utility system rates and charges,
14 except for measures necessary to carry out contractual obligations
15 provided for in previously issued bonds, notes, warrants, or other
16 evidences of indebtedness, and pay rates and salaries for municipal
17 subdivision employees other than the members of the governing body
18 and the executive officer; ~~and~~

19 (d) Measures relating to any facility or system adopted
20 or enacted pursuant to the Integrated Solid Waste Management Act by
21 municipalities except for measures necessary to carry out
22 contractual obligations provided for in previously issued bonds,
23 notes, warrants, or other evidence of indebtedness; and

24 (e) Measures relating to the condemnation of a natural
25 gas system as provided in section 1 of this act.

26 (3) Measures subject to limited referendum shall
27 ordinarily take effect thirty days after their passage by the
28 governing body, including an override of any veto, if necessary.

1 Referendum petitions directed at measures subject to limited
2 referendum shall be filed for signature verification pursuant to
3 section 18-2518 within thirty days after such measure's passage by
4 the governing body, including an override of any veto, if
5 necessary, or after notice is first published pursuant to
6 subdivision (4)(c) of this section. If the necessary number of
7 signatures as provided in section 18-2529 or 18-2530 has been
8 obtained within the time limitation, the effectiveness of the
9 measure shall be suspended unless approved by the voters.

10 (4) For any measure relating to the acquisition,
11 construction, installation, improvement, or enlargement of public
12 ways, public property, utility systems, or other capital projects
13 or any measure relating to any facility or system adopted or
14 enacted pursuant to the Integrated Solid Waste Management Act, a
15 municipality may exempt all subsequent measures relating to the
16 same project from the referendum and limited referendum procedures
17 provided for in sections 18-2501 to 18-2537 by the following
18 procedure:

19 (a) By holding a public hearing on the project, the time
20 and place of such hearing being published at least once not less
21 than five days prior to the date set for hearing in a newspaper of
22 general circulation within the governing body's jurisdiction;

23 (b) By passage of a measure approving the project,
24 including an override of a veto if necessary, at a meeting held on
25 any date subsequent to the date of hearing; and

26 (c) After passage of such measure, including an override
27 of a veto if necessary, by giving notice as follows: (i) For those
28 projects for which applicable statutes require an ordinance or

1 resolution of necessity, creating a district or otherwise
2 establishing the project, notice shall be given for such project by
3 including either as part of such ordinance or resolution or as part
4 of any publicized notice concerning such ordinance or resolution a
5 statement that the project as described in the ordinance or
6 resolution is subject to limited referendum for a period of thirty
7 days after the first publication of such notice and that, after
8 such thirty-day period, the project and measures related to it will
9 not be subject to any further right of referendum; and (ii) for
10 projects for which applicable statutes do not require an ordinance
11 or resolution of necessity, notice shall be given by publication of
12 a notice concerning such projects stating in general terms the
13 nature of the project and the engineer's estimate of costs of such
14 project and stating that the project described in the notice is
15 subject to limited referendum for a period of thirty days after the
16 first publication of such notice and that, after such thirty-day
17 period, the project and measures related to it will not be subject
18 to any further right of referendum. The notice required by
19 subdivision (c)(ii) of this subsection shall be published in at
20 least one newspaper of general circulation within the municipal
21 subdivision and shall be published not later than fifteen days
22 after passage by the governing body, including an override of a
23 veto, if necessary, of a measure approving the project.

24 The right of a municipal subdivision to hold such a
25 hearing prior to passage of the measure by the governing body and
26 give such notice after passage of such measure by the governing
27 body to obtain exemption for any particular project in a manner
28 described in this subsection is optional, and no municipal

1 subdivision shall be required to hold such a hearing or give such
2 notice for any particular project.

3 ~~(5) Nothing in subsections (2) and (4) of this section~~
4 ~~shall be construed as subjecting to limited referendum any measure~~
5 ~~related to matters subject to the provisions of the Municipal~~
6 ~~Natural Gas System Condemnation Act.~~

7 ~~(6)~~ (5) All measures, except as provided in subsections
8 (1), (2), and (4) of this section, shall be subject to the
9 referendum procedure at any time after such measure has been passed
10 by the governing body, including an override of a veto, if
11 necessary, or enacted by the voters by initiative.

12 Sec. 15. Section 19-709, Revised Statutes Supplement,
13 2004, is amended to read:

14 19-709. The mayor and city council of any city of the
15 first or second class or the chairperson and members of the board
16 of trustees of any village shall have power to purchase or
17 appropriate private property or school lands for the use of the
18 city or village for streets, alleys, avenues, parks, parkways,
19 boulevards, sanitary sewers, storm water sewers, public squares,
20 public auditoriums, public fire stations, training facilities for
21 firefighters, market places, public heating plants, power plants,
22 gas works, electric light plants, wells, or waterworks, including
23 mains, pipelines, and settling basins therefor, and to acquire
24 outlets and the use of streams for sewage disposal. When necessary
25 for the proper construction of any of the works above provided, the
26 right of appropriation shall extend such distance as may be
27 necessary from the corporate limits of the city or village, except
28 that no city of the first or second class or village may acquire

1 through the exercise of the power of eminent domain or otherwise
2 any real estate within the zoning jurisdiction of any other city of
3 the first or second class or village for any of the works
4 enumerated in this section if the use for which the real estate is
5 to be acquired would be contrary to or would not be a use permitted
6 by the existing zoning ordinances and regulations of such other
7 city or village, but such real estate may be acquired within the
8 zoning jurisdiction of another city of the first or second class or
9 village for such contrary or nonpermitted use if the governing body
10 of such other city or village shall approve such acquisition and
11 use. Such power shall also include the right to appropriate for
12 any of the above purposes any plant or works already constructed,
13 or any part thereof, whether the same lies wholly within the city
14 or village or part within and part without the city or village or
15 beyond the corporate limits of such city or village, including all
16 real estate, buildings, machinery, pipes, mains, hydrants, basins,
17 reservoirs, and all appurtenances reasonably necessary thereto and
18 a part thereof, or connected with such works or plants, and all
19 franchises to own and operate the same, if any. The procedure to
20 condemn property shall be exercised in the manner set forth in
21 sections 76-704 to 76-724, except as to property specifically
22 excluded by section 76-703 and as to which sections 19-701 to
23 19-707 ~~or the Municipal Natural Gas System Condemnation Act is~~ are
24 applicable.

25 Sec. 16. Section 57-1302, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 57-1302. Sections 57-1303 to 57-1307 shall be applicable
28 to an investor-owned natural gas utility only when it is operating

1 in a county in which there is located the natural gas service area,
2 or portion of the natural gas service area, of a metropolitan
3 utilities district and only with regard to matters arising within
4 any such county, except that such sections shall not apply to a
5 natural gas main extension connecting a town border station to an
6 existing natural gas distribution system. Within the limits of a
7 municipal county, the provisions of sections 57-1301 to 57-1307
8 shall be applicable to the extent and in the manner provided by the
9 Legislature as required by section 13-2802.

10 Sec. 17. Section 66-1803, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 66-1803. (1) A natural gas utility owned or operated by
13 a city or a metropolitan utilities district shall not be subject to
14 the provisions of the State Natural Gas Regulation Act and the
15 commission shall have no authority under the act over such a
16 natural gas utility or metropolitan utilities district.

17 (2) A natural gas public utility shall not be subject to
18 the jurisdiction of the commission or the requirements of the State
19 Natural Gas Regulation Act if (a) it distributes, sells, or
20 transports natural gas or provides natural gas services to persons
21 receiving services through fewer than seven thousand five hundred
22 meters in the state, (b) it has entered into an agreement with a
23 city in which it distributes, sells, or transports natural gas or
24 provides natural gas services that establishes the terms and
25 conditions of the service and the rates to be paid and such
26 agreement is authorized by an ordinance in effect at the time of
27 the distribution, sale, or transportation of natural gas or
28 provision of natural gas services, and (c) the terms and conditions

1 of such agreement are applicable to customers, if any, served by
2 the natural gas public utility outside the jurisdiction of the
3 city.

4 ~~(2)~~ (3) Any ratepayer or city served by a natural gas
5 public utility pursuant to subsection ~~(1)~~ (2) of this section, the
6 commission, the public advocate, or the natural gas public utility
7 providing service pursuant to subsection ~~(1)~~ (2) of this section
8 may pursue an action in the district court of the county in which
9 such utility operates for a determination as to whether or not such
10 utility is subject to the jurisdiction of the commission and the
11 requirements of the act by reason of the failure to meet one or
12 more of the qualifying factors set out in subsection ~~(1)~~ (2) of
13 this section.

14 Sec. 18. Section 66-1848, Reissue Revised Statutes of
15 Nebraska, is amended to read:

16 66-1848. For purposes of this section and section
17 66-1849:

18 (1) Aggregator means a person who combines retail end
19 users into a group and arranges for the acquisition of competitive
20 natural gas services without taking title to those services; and

21 (2) (a) Competitive natural gas provider means a person
22 who takes title to natural gas and sells it for consumption by a
23 retail end user. Competitive natural gas provider includes an
24 affiliate of a natural gas public utility.

25 (b) Competitive natural gas provider does not include the
26 following:

27 (i) A jurisdictional utility;

28 (ii) A city-owned or operated natural gas utility or

1 metropolitan utilities district; ~~in areas in which it provides~~
2 ~~natural gas service through pipes it owns, or~~

3 (iii) A natural gas public utility that is not subject to
4 the act as provided in section 66-1803 in areas in which it is
5 providing natural gas service in accordance with section 66-1803.

6 Sec. 19. Section 76-703, Reissue Revised Statutes of
7 Nebraska, is amended to read:

8 76-703. Damages to be paid by the condemner for any
9 property including parts of or easements across rights-of-way of a
10 public utility or a railroad taken through the exercise of the
11 power of eminent domain shall be ascertained and determined as
12 provided in sections 76-704 to 76-724, except that if it is sought
13 to condemn the property, or such part thereof as will result in a
14 decrease in the territory or volume of service, of a public utility
15 engaged in the rendition of existing service, such damages shall be
16 ascertained and determined as provided in sections 19-701 to 19-707
17 and 70-650 ~~or the Municipal Natural Gas System Condemnation Act,~~
18 when applicable.

19 Sec. 20. Original sections 16-6,101, 57-1302, 66-1803,
20 66-1848, and 76-703, Reissue Revised Statutes of Nebraska, and
21 sections 13-2802, 14-2116, 16-645, 16-674, 17-559, 18-2520,
22 18-2523, 18-2528, and 19-709, Revised Statutes Supplement, 2004,
23 are repealed.

24 Sec. 21. The following sections are outright repealed:
25 Sections 19-4624 to 19-4645, Revised Statutes Supplement, 2004.

26 Sec. 22. Since an emergency exists, this act takes
27 effect when passed and approved according to law.